

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1600 of 2000

to

FIRST APPEAL No 1652 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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SPECIAL LAND ACQUISITION OFFICER

Versus

GANDABHAI DHURABHAI

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Appearance:

MR RC KODEKAR, AGP for Petitioners

MR NITIN M AMIN for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.C.PATEL

Date of decision: 13/09/2000

ORAL (COMMON) JUDGEMENT

(Per: J.M. Panchal, J.)

Admitted. Mr. Nitin M. Amin. learned counsel waives service of notice of Rule on behalf of the claimants. Having regard to the facts of the case and in view of the joint request made by the learned counsel for the parties, the Appeals are taken up for final hearing today.

2. All these Appeals which are filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908 are directed against common judgment and award dated January 31, 2000 rendered by the Learned 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural), Mirzapur in Land Acquisition Case No.893 of 1998 to Land Acquisition Case No.945 of 1998 and as common questions of fact and law are involved in the Appeals, we propose to dispose them of by this common judgment.

3. The Executive Engineer, Narmada Project, Ahmedabad had proposed to the State Government to acquire agricultural lands of Village Karkthal, Taluka Viramgam, District Ahmedabad for the public purpose of construction of Vallabhaipur Branch Canal of Narmada Project. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of Village Karkthal were likely to be needed for the said public purpose. Therefore, Notification under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short) was issued which was published in the Official Gazette on August 29, 1991. Another Notification under Section 4(1) of the said Act was also published in the Official Gazette on April 30, 1992 with respect to other agricultural lands of the said village. The land owners whose lands were proposed to be acquired were served with notice under Section 4 of the Act and they had filed objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Narmada Project had forwarded his report to the State Government, as contemplated by Section 5A(2) of the Act. That report was considered by the State Government and the State Government was satisfied that the lands which were specified in the Notifications published under Section 4(1) of the Act on August 29, 1991 and April 30,

1992 were needed for the public purpose of Vallabhaipur Branch Canal of Narmada Project. Therefore, declarations under Section 6 of the Act were made which were also published in the Official Gazette on August 28, 1992, May 18, 1992 and January 28, 1993. Different declarations under Section 6 of the Act were made because different proposals were received by the State Government for acquisition of agricultural lands. After publication of declarations under Section 6 of the Act, the interested persons were served with notices under Section 9 of the Act for determination of compensation. Having regard to the materials placed before him, the Special Land Acquisition Officer, by his awards dated July 28, 1994, June 29, 1994 and April 29, 1995 offered compensation to the claimants at the rate of Rs.1.10 per sq.m. though the claimants had claimed compensation at the rate of Rs.20/- per sq.m. The claimants were dissatisfied with the offer and they did not accept the awards. They filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the court for the purpose of determination of compensation. Accordingly, references were made to the District Court, Ahmedabad (Rural) at Mirzapur which were numbered as Land Acquisition Case Nos.893 of 1998 to 945 of 1998.

4. In the Reference Applications, it was pleaded by the claimants that Village Karkthal had all facilities such as light, water, telephone, road, primary school etc. and therefore, the claimants ought to have awarded compensation at the rate of Rs.20/- per sq.m. The appellant no.1 had filed written statement at Exh.10 controverting the claim made by the claimants in Reference Applications. In the reply, it was stated that before determining compensation payable to the claimants all relevant factors were taken into consideration and therefore, the Reference applications should be dismissed. The appellant no.2 had filed written statement at Exh.12 and contended inter alia that in view of the location of each piece of land acquired as well as prevailing market rate and the type of land, the claimants were not entitled to compensation at the rate of Rs.20/- per sq.m. and therefore, the reference applications should be dismissed.

5. In view of rival assertions made by the parties, necessary issues for determination were framed by the Reference Court at Exh.14. On behalf of the claimants, witness Dasharathbhai Nagjibhai who was claimant in Land

Acquisition Case No.919 of 1998 was examined at Exh.18. He deposed before the court that there were facilities like water, light, school, telephone, co-operative societies etc. in the village and as the acquired lands were highly fertile and of equal level, the claimants were entitled to compensation, as claimed in the Reference Applications. The witness asserted before the court that each claimant was raising crops of Cotton, Bajri, Jowar, Wheat, Jeeru etc. and was earning Rs.12,000/- as net income after deducting agricultural expenses. The witness produced previous award of Reference Court rendered on September 2, 1998 in Land Acquisition Case Nos.255 of 1988 to 266 of 1988 and stated that as the said award related to the lands similar to the lands acquired in this case, the claimants should be awarded compensation on the basis of the said award. In his cross-examination, the witness denied the suggestion made on behalf of the present appellants to the effect that compensation offered by the Land Acquisition Officer was just and proper. On behalf of the appellants, two witnesses were examined namely, Babubhai Dhanabhai at Exh.91 and Pallaviben Ghanshyambhai at Exh.85. The witnesses examined on behalf of the appellants maintained before the court that the compensation determined by the Land Acquisition Officer was just and proper.

6. On appreciation of the evidence led by the parties, the Reference Court deduced that previous award produced by the claimants at Exh.17 was relevant for the purpose of determining compensation payable to the claimants in this case. The Reference Court noticed that previous award produced at Exh.17 related to the agricultural lands of this very village but therein Notification under Section 4(1) of the Act was published in the Official Gazette on July 7, 1983 whereas in the present case, Notifications under Section 4(1) of the Act were published on August 29, 1991 and April 30, 1992 as a result of which the claimants were entitled to 10% increase every year in price of land while determining compensation payable to them. In the ultimate analysis, the Reference Court has held that the claimants are entitled to additional compensation at the rate of Rs.13.50/- per sq.m. by the impugned award giving rise to the present Appeals.

7. Mr. R.C. Kodekar, the learned Assistant Government Pleader appearing for the appellants submitted that the previous award rendered in respect of

agricultural lands of this very village was not relevant at all for the purpose of ascertaining the market value of the lands acquired in the present case and therefore, the impugned award deserves to be set aside. It was pleaded that no evidence was produced on behalf of the claimants to show that the lands which were the subject matter of previous award Exh.17 were similar as well as comparable with the lands acquired in the instant case and therefore, the previous award should not have been relied upon by the Reference Court while determining compensation payable to the claimants. The learned Government counsel maintained that in any view of the matters, in absence of evidence, the claimants were not entitled to rise in price of lands because of time gap between the issuance of Notifications under Section 4(1) of the Act and therefore, that part of the award should be set aside by the court. Mr. Nitin M. Amin, learned counsel for the claimants contended that the claimants have led cogent and reliable evidence to establish that the lands which were covered by Exh.17 were similar as well as comparable to the lands acquired in the instant case and therefore, the Reference Court was justified in placing reliance on Exh.17 while determining compensation payable to the claimants. The learned counsel referred to admission made by the witness Babubhai Dhanabhai who was examined on behalf of the appellants to the effect that the lands which were subject matter of Exh.17 were similar in nature to the lands acquired in the present case and submitted that the previous award relating to the lands of the same village being relevant, the Appeals should be dismissed. The learned counsel for the claimants also submitted that there is always rise in price of real estate with the passage of time and therefore, 10% increase granted by the Reference Court should not be disturbed by the court in the present Appeals.

8. We have heard the learned counsel for the parties and taken into consideration paper-book supplied by the learned counsel for the respondents which contains oral as well as documentary evidence. In these cases, the claimants have not relied upon any sale instance to claim higher compensation but they have based their claim on the previous award of the Reference Court. Exh.17 which is the previous award of the Reference Court indicates that agricultural lands of Village Karkthal were acquired pursuant to publication of Notification under Section 4(1) of the Act on July 7, 1983 for public purpose of Karkthal-LIA Road. The Land Acquisition Officer in Land Acquisition Case No.94 of 1982 had offered compensation

to the claimants at the rate of Rs.00.45p per sq.m. by his award dated September 23, 1986. Thereupon, references were sought and the District Court, by judgment and award dated September 2, 1998 in Land Acquisition Case Nos.255 of 1988 to 266 of 1988, held that the claimants were entitled to compensation at the rate of Rs.7/- per sq.m. Feeling aggrieved by the said award of the Reference Court, the acquiring authorities had preferred First Appeal Nos.1755 to 1766 of 1999 before the High Court which were dismissed by the Learned Single Judge of this court vide judgment dated August 6, 1999. The witness of the claimants examined at Exh.18 has clearly deposed in his deposition before the Reference Court that the lands which were subject matter of Exh.17 were similar in all respects to the lands acquired in the present case. This assertion made by the witness on oath was never challenged by the present appellants. On the contrary, the witness examined by the appellants i.e. Babubhai Dhanabhai has in terms admitted that the lands covered at Exh.17 were similar and comparable to the lands acquired in the instant case. Therefore, we are of the considered opinion that the Reference Court was justified in placing reliance on the previous award of the Reference Court relating to this very village while determining compensation payable to the claimants in the present case. It is well-settled that earlier award of the Reference Court or the High Court in respect of similar or adjacent lands and which has become final between parties can be taken into consideration for the purpose of ascertaining the market value of the lands acquired subsequently from the same village. As noted earlier, on dismissal of the Appeals by the High Court, the award rendered by the Reference Court in earlier cases has become final. Though two witnesses were examined on behalf of the appellants, no evidence could be led to establish that the lands acquired in the instant case were inferior in quality to lands which were subject matter of Exh.17 or that the lands acquired subsequently had certain disadvantages because of certain relevant factors. Under the circumstances, it cannot be said that any error was committed by the Reference Court in placing reliance on previous award of the Reference Court. Moreover, it is reasonable to presume that price of lands increase with passage of time and having regard to the facts of the case, it cannot be said that the Reference Court has committed any error in considering the rise in price of the lands at the rate of 10% per annum in view of gap of time between publication of notification which was considered in Exh.17 and notifications under Section 4(1) of the Act published in this case. On overall view of

the matter, we are satisfied that a just and reasonable award has been passed by the Reference Court determining market value of the lands in this case and no ground is made out by the appellants to interfere with the same. It is clarified that the Reference Court has not awarded interest on solatium as well as interest on additional compensation payable under Section 23(1)A of the Act and the claimants will not be entitled to the same. In view of above discussion, the Appeals cannot be allowed and are liable to be dismissed. Therefore, all the Appeals fail and are dismissed with no orders as to cost.

( J.M. Panchal, J. )

( M.C. Patel, J. )

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